

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Rehearing pursuant to the Order of the District of Columbia Court of Appeals in the Application No. 13096 of First Baptist Church, pursuant to Sub-section 8207.2 of the Zoning Regulations, for a special exception under Paragraph 3104.44 to continue the operation of a parking lot in an R-5-B District at the premises 1513-19 O Street, N.W., (Square 195, Lots 74, 75, 830, 40, 71 and 111).

HEARING DATE: July 29, 1981
DECISION DATE: September 4, 1981

DISPOSITION: The Board DENIED the application by a vote of 5-0 (Charles R. Norris, Lindsley Williams, Douglas J. Patton, William F. McIntosh and Connie Fortune to DENY).

DATE OF FINAL ORDER: March 17, 1982

ORDER

On March 26, 1982, counsel for the applicant submitted a timely Motion for Reconsideration, Rehearing or Reargument of the Board's Order denying the subject application. In support of its motion, the applicant argued that it had met the test as set out by the D.C. Court of Appeals for approval of the application. The Motion argued that the Board did not adequately consider the following:

- a. The statement of applicant's traffic expert regarding the demand for parking in the area;
- b. Testimony by both the applicant and opposition that the lot is heavily used, indicating the necessity for the lot;
- c. The report of the D.C. Department of Transportation and the testimony of the applicant's traffic expert regarding the Church's accessibility to public transportation and the need for the lot;
- d. Testimony from the Church concerning its efforts to locate other possible parking spaces in the area

The Motion further argued that the applicant should not be held accountable for the manner in which its tenant operated the lot.

Counsel for the opposition to this application filed an answer to the applicant's Motion on April 5, 1982, opposing the Motion. The grounds for the opposition to the applicant's Motion were that:

- a. The Church failed to identify any new evidence which could not reasonably have been presented at the public hearing; and
- b. The Church's indication that it will secure a new tenant for the lot illustrates that the Church has not properly monitored the condition of the lot or it would have previously replaced any tenant which proved undesirable.

Upon consideration of the Motion on behalf of the applicant, the answer filed on behalf of the opposition, and the Board's Order, the Board finds that the Motion of applicant does not address any substantive issues which were not previously considered by the Board. The Board concludes that the D.C. Administrative Procedure Act does not require the Board to explain why it favored particular testimony. The Board concludes that it has committed no error of fact or law. The Board concludes that the applicant has offered no new evidence which could not reasonably have been presented at the original hearing.

The Board further notes that it is inappropriate for the applicant to propose to secure a new tenant in order to cure the deficiencies in the operation and maintenance of the lot only after the Board has denied the requested relief. The applicant should have insured that the lot was kept in compliance at all times. The Board concludes therefore that it has committed no error in deciding the application. It is therefore ORDERED that the Motion is DENIED.


DECISION DATE: April 7, 1982

VOTE: 3-0 (Connie Fortune, William F. McIntosh and Charles R. Norris to DENY Motion; Douglas J. Patton, not present not voting; Walter B. Lewis not voting, not having heard the case).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

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ATTESTED BY:


STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER:

APR 28 1982

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."